IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 1690 of 2002

in

SPECIAL CIVIL APPLICATION No 6615 of 2001

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. D.S.SINHA
and
Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES YES

2. To be referred to the Reporter or not? YES :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO SEEN

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO NO

5. Whether it is to be circulated to the concerned Mgistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? YES

REV. FATHER E. G. KURIAKOSE COR EPISCOPA

Versus

FATHER THOMAS MYALIL

Appearance:

1. Misc.Civil Application No. 1690 of 2002
PARTY-IN-PERSON for Petitioner.
..... for Respondent Nos. 1-6

CORAM : THE CHIEF JUSTICE MR. D.S.SINHA
and
MR.JUSTICE J.M.PANCHAL

Date of decision: 03/12/2002

ORAL ORDER
(Per : THE CHIEF JUSTICE MR.D.S.SINHA)

Heard Rev.Father E.G.Kuriakose Cor Episcopa, the petitioner, who is appearing in person, at length and in detail.

2. By means of instant application, the petitioner urges this Court to initiate proceedings against the respondents and punish them for the alleged contempt of the Joint Charity Commissioner, Vadodara Division, Vadodara, as well as of this Court. He asserts that the order of this Court dated 18th September, 2001 passed in Special Civil Application No. 6615 of 2001, Rev.Father E.G.Kuriakose Cor Episcopa vs. Father Thomas Myalil, has not been complied with and has been disobeyed deliberately by the respondents. Further assertion of the petitioner is that the respondents have disobeyed the order dated 4th October, 2001 passed by the Joint Charity Commissioner, Vadodara Division, Vadodara, passed in Judicial Misc. Application No. 51 of 2001, Rev.Father E.G.Kuriakose cor Episcopa vs. Father Thomas Myalil and Shri A.M.Methew.

3. By its order dated 18th September, 2001, the Court directed the Joint Charity Commissioner concerned to decide the grievance made by the petitioner, in accordance with law and as per the provisions of the constitution of the relevant Trust, within a period of three weeks from the date of presentation of a certified copy of the order, after giving reasonable opportunity of hearing to the petitioner and the parties concerned. The direction contained in the order of this Court was only to the Joint Charity Commissioner and none else. The respondents arrayed herein figure nowhere in the order, and had no role to play in the implementation of the order of this Court dated 18th September, 2001. They have been impleaded in instant application under some misconception or ill-advice. So far as compliance of the order by the Joint Charity Commissioner is concerned, the petitioner admits that the grievance raised by him was duly decided by the Joint Charity Commissioner, Vadodara Division, Vadodara, within the time stipulated in the order of the Court. This is also evident from the order of the Joint Charity Commissioner dated 4th October, 2001, a photo copy of the certified copy whereof is appended to the application as Annexure "E". Thus, there has been no disobedience of the order of this Court,

passed on 18th September, 2001, by anybody, in any manner. The contention of the petitioner, in this regard, is frivolous. It is, therefore, rejected.

4. For determination of the question of disobedience of the order dated 4th October, 2001 passed by the Joint Charity Commissioner, Vadodara Division, Vadodara, by the respondents, it is apposite to reproduce the relevant part of the order. It reads as follows :

"Order

This Order is given that the application of the applicant filed under section 41-A of the Bombay Public Trusts Act 1950 is fully allowed.

By virtue of Section 41-A and Section 69 of the Bombay Public Trust Act 1950, hereby give directions that the so called President of Opponent No.1 Trust of this case is hereby directed to send the Agenda with Notice of the General Body Meeting to be held on 7-10-2001 to the Applicant by 5-10-2001 before 3 p.m. by Registered post A.D. and one additional copy of the same tobe sent in the name and address of the applicant through telegram i.e. Thaar and in any circumstances if the Opp.No.1 on behalf of the Trust could not send the said agenda to the applicant, then also, being a member of the applicant should be allowed to attend and participate in the General Body Meeting and in that case no any objections and obstruction should not be done.

The Opponent No.1 is hereby warn that, they are bound to follow the said directives and it should be implemented in a perfect manner and also tobe treated in a very serious manner.

The applicant has withdrawn the prayer mentioned in Para No.19(b) to (g) of Exhbt.1 application vide Exhbt.14 i.e. pursis and hence it is directed that the particular part of the application of the applicant is tobe treated as cancelled and filed.

The copy of this Order is tobe sent urgently to the Opp.No.1 through Registered Post A.D. An additional copy of the same is to be handed over to Shri Shaileshbhai Patel, Ld.Advocate for the Opponent, after getting his signature.

The copy of the order is to be given urgently to the Applicant, and the applicant can inform this order to the President and Secretary (including Opponent No.1) through telegram.

There shall be no order as to costs. In response of letter No.13935 dated 29.9.2001, the information of this order tobe forwarded to the Legal Officer at the Office of the Charity Commissioner.

Sd/- 4-10-01
Vadodara (Amrish M.Upadyaya)
Dt.4-10-2001 Joint Charity Commissioner
evening 19.15 Vadodara Division,Vadodara"
hours.

5. A bare perusal of the order extracted above shows that it gave directions only to opponent No.1 in Judicial Misc. Application No.51 of 2001, and none else. The said opponent figures herein as "respondent No.1". The other respondents impleaded in the instant application have been wrongly impleaded. The prayer of the petitioner for initiating contempt proceedings against the respondent Nos. 2, 3, 4, 5 & 6 is misconceived and frivolous.

6. The examination of the question whether the directions given by the Joint Charity Commissioner, Vadodara Division, Vadodara, contained in his order dated 4th October, 2001, have been disobeyed by the respondent No.1, rendering him liable for being punished for contempt, in the opinion of the Court, is unnecessary. Such adjudication will be better done by the appropriate authority in appropriate proceedings contemplated in The Bombay Public Trusts Act,1950, as applicable in the State of Gujarat, hereinafter called the "Act".

7. Section 67 of the Act provides that whoever contravenes any of the provisions of the Act or the Rules for which no specific penalty has been provided by the Act, or fails, without reasonable cause, to comply with any order passed or direction issued under any of the provisions of the Act by the Charity Commissioner, Joint Charity Commissioner or Deputy or Assistant Charity Commissioner, shall, on conviction, be punished with fine which may extend to Rs.500/- (Rupees Five Hundred only). It further provides that in the absence of special adequate reasons to the contrary to be mentioned in the

judgment of the Court, a person, who has a previous conviction under the section, shall be punished with fine which shall not be less than Rs.300/-(Rupees Three Hundred only).

8. Section 82 of the Act envisages that no Court inferior to that of a Presidency Magistrate or Magistrate of the First Class, shall try an offence punishable under the Act. Succeeding Section 83 contemplates that no prosecution, for an offence punishable under the Act, shall be instituted without the previous sanction of the Charity Commissioner.

9. The conjoint and meaningful reading of the provisions of Sections 67, 82 and 83 of the Act leads to an irresistible conclusion that a complete machinery for action to be taken in case of any contravention of the provisions of the Act, or the Rules for which no specific penalty has been provided by the Act, or failure, without any reasonable cause, to comply with any order passed or direction issued under any of the provisions of the Act by the Charity Commissioner, Joint Charity Commissioner, or Deputy or Assistant Charity Commissioner, is provided in the Act itself. Undoubtedly, the alleged disobedience of the directions given in the order of the Joint Charity Commissioner, dated 4th October, 2001, if established, would render the respondent No.1 liable for conviction and punishment for which the prosecution has to be launched in the appropriate Court by the petitioner. He may do so, if he is so advised. But, in the opinion of the Court, it would be inappropriate and inexpedient for this Court to initiate proceedings for contempt, as prayed for by the petitioner.

10. From what has been said above, it is abundantly clear that instant application is totally misconceived and frivolous. It amounts to gross abuse of the process of the Court rendering the petitioner liable to be saddled with costs.

11. In the result, the application is dismissed with costs quantified at Rs.1000/- (Rupees One Thousand only) which shall be deposited by him in the Registry of the Court, within a period of two months, failing which the petitioner shall stand exposed to action for disobedience of this order. Upon completion of the period stipulated hereinabove for depositing the cost, the Registry shall report to the Court.

(D.S.Sinha,C.J.)

(J.M.Panchal,J.)

(patel)